

## REMARKS

The issues outstanding in the Office Action mailed March 7, 2005, are the Requirement for Restriction, the objection to claim 9 and the rejections under 35 U.S.C §§102 and 103. Reconsideration of these issues, in view of the following discussion, is respectfully requested.

### Requirement for Restriction

Applicants respectfully maintain their traversal of the Restriction Requirement. It is argued at page 2 of the Office Action that an article claim cannot be a subcombination of a method claim, and further argued that a "pipe" is not a subcombination of a "method comprising transporting fluids." However, the present claims recite such a method using a pipe "according to claim 1" and, thus, the method claims require all the elements of the pipe claim. Applicants are unaware of any prohibition in the M.P.E.P. on the subcombination/combination relationship being applied to articles and methods. It is therefore respectfully submitted that the relationship discussed in the traversal of the Restriction Requirement is correct and provides basis for withdrawal of the Restriction Requirement. The same is again respectfully requested.

### Objections to Claims

Claim 9 has been objected to as a result of a typographical error. Appropriate correction has been made, and withdrawal of the rejection is respectfully requested.

### Rejections Under 35 U.S.C §102

Claims 1 - 3 and 9 have been rejected under 35 U.S.C §102(b) over Strassel et al. '893. Moreover, at page 3 of the Office Action, claims 1 and 9 are *again* rejected under 35 U.S.C §102(b) over Strassel. Inasmuch as these two apparently separate rejections make essentially the same arguments, they are responded to together herein.

Strassel, commonly assigned with the present application, discloses a tubular conduit having an inner flexible metal pipe covered with a shrinkable polymer sealing sheath, and in between the shrinkable polymer sheath and the metal pipe, an intermediate *elastomer* layer. The elastomer layer is discussed in detail in the patent, for example, at column 5, lines 57 - column 6,

line 35. Patentees teach that elastomeric polymers include, not only elastomers proper, but also "thermoplastic elastomers". See column 5, lines 64 - 66. Patentees moreover teach that such thermoplastic elastomers "always" display two incompatible phases, of thermoplastic sequences in elastomer phase. See column 6, lines 6 - 8. Patentees further disclose five types of thermoplastic elastomers at column 6, lines 10 - 35. Of interest is the disclosure at column 6, lines 32 - 35, where it is indicated that a "polyamide-based copolymer" which is a thermoplastic elastomer, contains sequences of polyamide, *and pliable crystallizable sequences of polyether.*" Such a material, patentees note, is a polyether amide. Consistently with this terminology, in claim 24, where patentees indicate that the "elastomer" is, i.a., a polyamide thermoplastic elastomer, the patentees clearly teach that such the thermoplastic elastomer, if it is a polyamide, is, in fact, a polyether amide.

Thus, contrary to the indication at page 3 of the Office Action, patentees do not teach a layer of *thermoplastic* polyamide, but rather, at best, a layer of thermoplastic elastomeric polyether amide. Patentees thus clearly do not anticipate a flexible pipe, having, as a layer, one formed from at least one thermoplastic polymer consisting of a polyamide or blend of a polyamide and a polyolefin having a polyamide matrix, nor a polyamide blend with a polyamide having a polyolefin matrix as in claim 10. Accordingly, it is submitted that patentees fail to anticipate claims 1 - 3 and 9, and withdrawal of each of these rejections is respectfully requested. It is noted that claim 1 has been amended in order to specify that the thermoplastic polymer (A) consists of a polyamide, or a polyamide with a polyolefin matrix. Accordingly, withdrawal of these rejections is respectfully requested.

#### Rejections Under 35 U.S.C §103

Claims 2 - 5 have been rejected under 35 U.S.C §103 over Strassel taken with Fisher et al. Reconsideration of this rejection is also respectfully requested. Fisher is cited in order to provide a teaching of an outer layer formed from at least one thermoplastic polymer. As such, Fisher does nothing to remedy the deficiency of Strassel, discussed above, which does not teach the inclusion of a thermoplastic polymer consisting of a polyamide or a polyamide with a polyolefin matrix as the inner layer. Accordingly, it is submitted that claims 2 - 5 are not

suggested under 35 U.S.C §103 over the cited references.

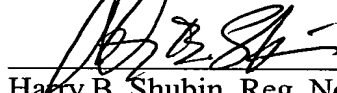
Claim 6 has been rejected under 35 U.S.C §103 over Strassel taken with Rober et al., and claim 7 has been rejected under 35 U.S.C §103 over Strassel taken with Hill. Reconsideration of these rejections is also respectfully requested.

Rober is cited in order to provide a teaching of a tie layer. Hill is cited in order to provide a teaching of the use of high density polyethylene as a polyolefin outer layer. Without commenting on this teaching and its availability from the combination of references, it is submitted that Strassel, as discussed above, fails to provide a teaching of the presently claimed thermoplastic layer. Accordingly, it is submitted that the combination of references fails to suggest the present claims, and withdrawal of these rejections is also respectfully requested.

The claims of the application are submitted to be in condition for allowance. However, if the Examiner has any questions or comments, he is cordially invited to telephone the undersigned at the number below.

The Commissioner is hereby authorized to charge any fees associated with this response or credit any overpayment to Deposit Account No. 13-3402.

Respectfully submitted,

  
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